

BILL ANALYSIS

C.S.H.B. 2328
By: Woolley
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The current animal cruelty statute, Section 42.09, Penal Code, has created a situation in which certain acts of violence toward animals have escaped prosecution. Examples of acts which did not result in the punishment of the offender include drowning shelter dogs in cages dropped into a city's sewage tank; burning and mutilating live kittens; killing a puppy with a power lawn mower; and staking dogs and leaving them to die without food, water or shelter.

In order to remedy this situation, Committee Substitute to House Bill 2328 amends Section 42.09, Penal Code, which applies to livestock animals, and adds Section 42.092 to the Penal Code which applies to nonlivestock animals and seeks to address the aforementioned violent and unpunished acts toward animals while preserving long standing protections to prosecution for persons who fear bodily injury from a dangerous wild animal; or who engage in the acts of bona fide scientific experimentation, hunting, fishing, trapping, regulated wildlife control, farming, animal husbandry, and for certain acts against animals caught in the act of injuring or killing livestock animals.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Committee Substitute to House Bill 2328 amends Section 42.09, Penal Code, by providing that a person commits an offense if the person intentionally or knowingly commits certain acts to a livestock animal. The bill adds that failing to unreasonably provide water for a livestock animal is an offense. Also the bill adds that causing one livestock animal to fight with another livestock animal or a nonlivestock animal is an offense under this section. The bill removes the definition of "animal" and replaces it with the term "livestock animal," which means cattle, sheep, swine, goats, ratites, or poultry commonly raised for human consumption; a horse, pony, mule, donkey, or hinny; or native or nonnative hoofstock raised under agriculture practices. The bill makes conforming changes to this section to reflect a reference to livestock animals.

The bill provides that an offense under Subsection (a)(2), (3), (4), (9), or (10) of Section 42.09, Penal Code is a Class A misdemeanor, except the offense is a state jail felony if the person was previously convicted two times under Section 42.09, Penal Code, two times under Section 42.092, Penal Code, or one time under Section 42.09, Penal Code, and one time under Section 42.092, Penal Code. It also provides that an offense under Subsection (a)(1), (5), (6), (7), or (8) of Section 42.09, Penal Code, is a state jail felony, except the offense is a felony of the third degree if the person has been previously convicted two times under Section 42.09, Penal Code, two times under Section 42.092, Penal Code, or one time under Section 42.09, Penal Code, and one time under Section 42.092, Penal Code.

The bill removes the provision that it is a defense to prosecution under Section 42.09(a)(5), Penal Code, that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.

The bill also removes the provision that it is a defense to prosecution if the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

The bill provides an exception to the application of this section that the person is engaged in a form of conduct that is generally accepted and otherwise lawful acts solely for the purpose of fishing, hunting, trapping, certain regulated wildlife or depredation control, animal husbandry, or agriculture practice involving livestock animals.

C.S.H.B. 2328 amends Chapter 42, Penal Code, by adding Section 42.092 which provides that a person commits an offense if the person intentionally, knowingly, or recklessly commits certain acts to a nonhuman mammal, bird, or captive amphibian or reptile that is not a livestock animal. These offenses include:

- torturing an animal or in a cruel manner killing or causing serious bodily injury to an animal;
- killing, administering poison to, or causing serious bodily injury to an animal without legal authority or the owner's effective consent;
- unreasonably failing to provide necessary food, water, care, or shelter for an animal in the person's custody;
- abandoning unreasonably an animal in the person's custody;
- transporting or confining an animal in a cruel manner;
- causing bodily injury to an animal without legal authority or the owner's effective consent;
- causing one animal to fight with another animal, if either animal is not a dog;
- using a live animal as a lure in dog race training or in dog coursing on a racetrack; or
- seriously overworking an animal.

Defines "abandon," "animal," "cruel manner," "custody," "livestock animal," and "necessary food, water, care, or shelter."

This section provides that an offense under Subsection (b)(3), (4), (5), (6) or (9) of Section 42.092, Penal Code, is a Class A misdemeanor, except the offense is a state jail felony if the person has previously been convicted two times under Section 42.09, Penal Code, two times under Section 42.092, Penal Code, or one time under Section 42.09, Penal Code, and one time under Section 42.092, Penal Code. Subsection (b)(1), (2), (7), or (8) of Section 42.092, Penal Code, is a state jail felony, except the offense is a felony of the third degree if the person has been previously convicted two times under Section 42.09, Penal Code, two times under Section 42.092, Penal Code, or one time under Section 42.09, Penal Code, and one time under Section 42.092, Penal Code.

The bill provides a defense to prosecution under Section 42.092, Penal Code, that a person had a reasonable fear of bodily injury to the person or to another person by certain dangerous wild animals. It also provides a defense to prosecution under Section 42.092, Penal Code, that a person was engaged in bona fide experimentation for scientific research.

The bill provides a defense to prosecution under Subsection (b)(2) or (6) of Section 42.092, Penal Code, that the person killed or injured a dog or coyote that was in the act of or immediately after injuring or killing the person's livestock animals on the person's property.

The bill also provides an exception to the application of Section 42.092, Penal Code, that the person is engaged in a form of conduct that is generally accepted and otherwise lawful acts solely for the purpose of fishing, hunting, trapping, certain regulated wildlife or depredation control, animal husbandry, or agriculture practice involving livestock animals.

C.S.H.B. 2328 amends the Family Code, Health and Safety Code, and Occupations Code to make conforming changes.

Makes application of this Act prospective.

EFFECTIVE DATE

C.S.H.B. 2328 80(R)

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2328 amends the definition of "livestock animal" to change fowl to poultry. Further amends the definition of "livestock animal" by adding ratites and native or nonnative hoofstock raised under agriculture practices.

The substitute provides that a person commits an offense if the person intentionally or knowingly kills, seriously injures, injures, or administers poison to a livestock animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority of the owner's effective consent. The original removed language that is currently in statute of "other than cattle, horses, sheep, swine, or goats."

The substitute adds that it is an offense if the person intentionally or knowingly causes one livestock animal to fight with another livestock animal or with an animal as defined by Section 42.092, Penal Code. With the addition of this provision in the substitute, the substitute adds that this additional offense is a state jail felony, except that the offense is a felony of the third degree in certain circumstances.

C.S.H.B. 2328 clarifies that it is an exception to the application of Section 42.09 and 42.092, Penal Code, that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of fishing, hunting, trapping; wildlife or depredation control as regulated by state and federal law; or animal husbandry or agriculture practice involving livestock animals. The original bill provided that it is an exception to the application of Section 42.09, Penal Code, that the conduct engaged in by the actor is generally accepted and otherwise lawful use of a livestock animal if that use occurs solely for the purpose of fishing, hunting, trapping; wildlife control as regulated by state and federal law; or animal husbandry or farming practice involving livestock. The original bill also provided that it is a defense to prosecution under Section 42.092, Penal Code, that the conduct engaged in by the actor is generally accepted and otherwise lawful use of an animal if that use occurs solely for the purpose of fishing, hunting, or trapping; or wildlife control as regulated by state and federal law; or animal husbandry or farming practice involving livestock animals.

The substitute also changes Section 42.092 (b)(2), Penal Code, that a person commits an offense if the person intentionally, knowingly, or recklessly kills, administers poison to, or causes serious bodily injury to an animal without legal authority or the owner's effective consent into one subsection. The original only stated in Section 42.092 (b)(2), Penal Code, that a person commits an offense if the person intentionally, knowingly, or recklessly kills or causes serious bodily injury to an animal without legal authority or the owner's effective consent. The original had the provision relating to administering poison in Section 42.092 (b)(6), Penal Code.

Since the substitute moved the provision relating to administering poison to the provision relating to killing or causing serious bodily injury in Section 42.092(b)(2), Penal Code, and removed the provision relating to administering poison out of Section 42.092(b)(6), Penal Code, the substitute made conforming changes to the level of punishment. Therefore in the substitute, if a person intentionally, knowingly, or recklessly kills, administers poison to, or causes serious bodily injury to an animal without legal authority or the owner's effective consent, then the offense is a state jail felony, except in certain circumstances. Also in the substitute, if the person intentionally, knowingly, or recklessly causes bodily injury to the animal without legal authority or the owner's effective consent, then the offense is a Class A misdemeanor, except in certain circumstances. In the original, if a person intentionally, knowingly, or recklessly causes bodily injury, then the punishment is a state jail felony, except in certain circumstances.

The substitute also provides that it is a defense to prosecution under Subsection (b)(2) or (6) of Section 42.092, Penal Code, that the person killed or injured a dog or coyote that was in the act of or immediately after injuring or killing the person's livestock animals on the person's property. The original did not explicitly state that the animal had to be a dog or coyote.